

Fallout From a CIA Affidavit

By **Vernon Loeb** April 24, 2000

The globe-trotting exploits of Edwin P. Wilson, a rogue former CIA agent, ended in a Houston courtroom in 1983. Federal prosecutors accused him of shipping 22 tons of C-4 plastic explosives to Libya in the largest illegal arms deal in U.S. history. Wilson's only defense: He had been selling arms to Libya as cover to gather intelligence for the CIA.

At a critical point in the trial, prosecutors presented an affidavit from a top CIA official denying that Wilson had been asked "to perform or provide any services, directly or indirectly." Before convicting Wilson, the jury asked to have the affidavit reread to them. That convinced the lone holdout. Wilson got 52 years in prison.

Now, nearly two decades later, that brief sworn statement--3 1/2 pages signed by Charles A. Briggs, then the third-ranking CIA official--is having an explosive impact of its own.

It turns out the affidavit wasn't true. Wilson had in fact been asked to perform services for the CIA, although none of them involved the selling of C-4.

Newly declassified documents show that a CIA investigator immediately questioned the accuracy of the affidavit after Wilson was convicted. Senior attorneys at both the CIA and the Justice Department concluded that they had to alert Wilson and his attorneys. The Supreme Court has held that prosecutors who discover they have used inaccurate testimony to obtain a conviction must inform both the court and the defendant.

But the government never told Wilson or his attorneys, making only an indirect, limited disclosure in a court document filed eight months later. The full story was hidden for years until Wilson himself unearthed documents through the Freedom of Information Act.

Wilson's court-appointed attorney, former CIA operative David Adler, has filed a motion seeking to have Wilson's conviction overturned on grounds that prosecutors knowingly used false testimony and then failed to disclose it to Wilson's lawyers. His allegations of prosecutorial misconduct are under review by the Justice Department's Office of Professional Responsibility.

"I don't think there's any question I wanted disclosure; that's the way I operate," said Stanley Sporkin, the CIA's general

counsel at the time, who retired in January after 14 years as a U.S. district judge in Washington. "I probably went further than anybody would have gone--I took it up to the top of the [Justice Department]. This was a Justice Department issue. They were the lawyers in the courtroom. How much can you insist?"

Sporkin denied knowing that the Briggs affidavit was false at the time. The Justice Department also denies that prosecutors knowingly used a false affidavit. But the department now admits in legal filings: "With the benefit of retrospection and in light of all the information now known to the Department, it appears that the statement was inaccurate."

Nonetheless, Justice lawyers argue that the affidavit's inaccuracy should not invalidate Wilson's conviction without evidence that the CIA authorized him to sell C-4 to Libya. The department also contends that its limited disclosure 16 years ago corrected Briggs's "misstatement."

Regardless of its outcome, Wilson's case raises an issue best formed as a pair of questions: What did prosecutors know and when did they know it? The saga gives a rare glimpse of government attorneys maneuvering to obtain a conviction and then rationalizing their tactics. The case also contains a central irony: The CIA, despite its reputation for flouting the law, immediately lobbied for full disclosure, only to be overruled by senior Justice Department officials.

Wilson's attorney also has filed a motion before U.S. District Judge Lynn Hughes in Houston asking that 17 current and former CIA and Justice Department officials be held in contempt, including Sporkin; two top Reagan Justice officials, Stephen S. Trott and D. Lowell Jensen, both now federal judges; Deputy Assistant Attorney General Mark M. Richard, now in his 33rd year with the department; former assistant U.S. attorney E. Lawrence Barcella Jr., now a well-known D.C. defense attorney; and veteran federal prosecutor Theodore Greenberg.

Like Sporkin, Barcella denied knowing that the Briggs affidavit was false at the time. Trott, Jensen, Richard and Greenberg either declined to comment or did not respond to telephone calls.

If the federal court in Houston rules in Wilson's favor, the likely remedy would be a new trial, according to Georgetown University law professor Samuel Dash, former chief counsel of the Senate Watergate committee.

"He's entitled to a new trial, in which all of the relevant evidence gets in," Dash said. "Whether it would raise a reasonable doubt with the jury is another question."

Wilson, 72, a strapping 6-foot-5 man with thinning white hair, has spent almost 18 years in prison.

"Deception and lies may serve a purpose in the world of espionage," Adler wrote in Wilson's motion, "but they have no place in the justice system."

Wilson: A CIA Renegade 'On a Different Level'

Prosecutors had ample motivation for vigorously pursuing Edwin Wilson in the early 1980s. While awaiting trial in Houston, Wilson offered a convicted murderer \$500,000 to kill two prosecutors, an act for which Wilson was subsequently convicted.

Wilson was part of a generation of renegade Cold War CIA operatives; a number of his associates were implicated in the Iran-contra scandal in the late 1980s. His arms trading began as an outgrowth of his CIA career running agency front companies. At his peak in the early 1980s, Wilson was estimated to be worth \$23 million; he owned a 2,500-acre horse farm in Fauquier County and other properties stretching from North Carolina to Lebanon.

He fled the country to avoid arrest in 1980. He lived in a luxurious villa outside Tripoli, serving as an adviser to Libyan dictator Moammar Gadhafi. And when he was finally apprehended in June 1982, Wilson carried bogus passports from Ireland, Britain and Malta.

Setting aside traitors such as former CIA officer Aldrich H. Ames, Wilson is perhaps the most legendary bad man in the annals of the CIA. His case eventually would become fodder for nonfiction thrillers such as "Manhunt: the Incredible Pursuit of a CIA Agent Turned Terrorist" by Peter Maas and "The Death Merchant: The Rise and Fall of Edwin P. Wilson" by Joseph C. Goulden and Alexander W. Raffio.

"Every intelligence agency has its cowboys," said David Wise, a noted author and espionage expert. "But Ed Wilson was a crook, a renegade--he's on a different level. The CIA provided him with cover, which they've done before. But he then used the CIA to enrich himself."

Barcella, the prosecutor almost singularly responsible for bringing Wilson to justice, said: "Here was a guy who gave the world's leading terrorist 40,000 pounds of a terrorist's favorite weapon, plastic explosives."

The Briggs Affidavit: A Crucial Tool for Trial

The Briggs affidavit took shape in Houston on Feb. 3, 1983, three days before Wilson's conviction. This account is based on hundreds of pages of internal government documents introduced in court as part of the motion to overturn Wilson's conviction.

Lead prosecutor Ted Greenberg wanted to shred Wilson's "CIA defense" with an affidavit from Briggs, then the CIA's executive director and now retired. So Briggs and two CIA attorneys, Edmund Cohen and David Pearline, got together to draft it. They agreed at the outset that the Briggs affidavit should state that there were no CIA records authorizing the shipment of C-4 to Libya. They set out to define Wilson's relationship with the CIA as narrowly as possible by using the word "tasking," a specific request for a service.

The three CIA men knew that the agency's own extensive reporting had found that there were many "contacts" with Wilson since his retirement in 1971--social occasions, exchanges of information--but no "tasking." There was one exception in 1972, when the CIA paid Wilson \$1,000 for sending an employee to Libya to gather information. The \$1,000 payment would be noted in the affidavit.

The three men then decided that a layman might not understand the term "tasking." So the group substituted the word "services." The document now said the CIA never "asked or requested [Wilson] to perform or provide any services for CIA."

Greenberg, seeking to make the affidavit even stronger, rewrote the sentence to read: Edwin P. Wilson was not "asked or requested, directly or indirectly, to perform or provide any services, directly or indirectly, for CIA."

But the tinkering had so expanded the meaning of the sentence that it made the document inaccurate. Wilson alleges that the government lawyers knew they were shading the truth. The Justice Department now concedes only that government lawyers apparently failed to comprehend that they had "stripped the term 'services' of crucial qualifying language connoting an intelligence gathering function."

Shortly after the affidavit was drafted in Houston, CIA general counsel Sporkin, in Langley, told the lawyers that he opposed using it, thinking it confusing and a possible basis for appeal, because Wilson's lawyers would not be able to cross-examine a piece of paper.

But Greenberg disregarded Sporkin's repeated objections, saying he felt the affidavit was essential to winning the case.

Greenberg read the affidavit in court on the final day of trial. The jury retired for the evening after deliberating for four hours.

When jurors reconvened the next morning, they asked the judge to reread the Briggs affidavit. An hour later, they returned a verdict: guilty.

"There were several of us that thought possibly the CIA might have something to do with that, but when they admitted that last affidavit, that convinced me," juror Betty Metzler told United Press International the day Wilson was convicted.

A Debate Over Duty To Disclose Inaccuracy

At the CIA, Mark Tanes wasn't convinced. He worked in the agency's inspector general's office and had been researching Wilson for at least a year to help the prosecutors in Houston.

On Feb. 8, three days after Wilson's conviction, Tanes penned a memo to the CIA's inspector general questioning the accuracy of the Briggs affidavit. Tanes cited several undisclosed CIA requests for services from Wilson.

Within two days, Justice Department attorney Kim Rosenfield sent a memo to her boss, Deputy Assistant Attorney General Mark Richard, entitled, "Duty to Disclose Possibly False Testimony."

The memo noted that case law required a prosecutor to correct false testimony. A new trial was required if the false testimony could "in any reasonable likelihood have affected the judgment of the jury."

At the top of the memo someone wrote: "Plain meaning of services--the affid. is inaccurate."

Spurred by the memos from Tanes and Rosenfield, Sporkin's office quickly drafted a letter to Wilson's lawyer disclosing problems with the Briggs affidavit.

Sporkin, the CIA's top lawyer, forwarded the draft letter to Richard at the Justice Department. Sporkin pushed to have the matter resolved before Wilson's sentencing, but noted in a memo he placed in his own files that Richard "indicated there was very little sentiment in DOJ to do anything about the Briggs' declaration."

Richard, often described as a pillar of the Criminal Division, then alerted his boss, Assistant Attorney General D. Lowell Jensen, now a senior U.S. district judge in Northern California.

"As for my own views, I think we must make a disclosure--either to the judge or the defense attorney," Richard counseled in a handwritten note to Jensen dated Feb. 22. "A third option is to disclose to both."

In April, the CIA completed its final review of Wilson's services and sent the Justice Department a detailed list of 80 contacts between Wilson and CIA personnel after 1971. Twice, a CIA officer had asked Wilson to provide antitank weapons for a sensitive operation. On another occasion, the CIA had negotiated the sale of two salt-water distillation units to Egypt through Wilson's firm.

The CIA's associate deputy director, Theodore G. Shackley, a legendary operative known as the "Blond Ghost," had asked Wilson for a list of his Libyan contacts. Shackley also had met with Wilson in the late 1970s to see if Wilson could acquire a Soviet surface-to-air missile system.

By midsummer, Richard wrote Jensen that "disclosure is, unfortunately, necessary. I suspect I am in the minority."

In undated handwritten notes by an unidentified participant at a CIA-Justice meeting, Jensen is quoted as saying the government had an "underlying obligation of disclosure to court."

Jensen left the Justice Department and was replaced on Aug. 1, 1983, by Stephen Trott. And the thinking on disclosure shifted.

Another handwritten note from an Aug. 8 meeting states that disclosure, if deemed necessary, should be made only in the government's reply to Wilson's appeal, not to Wilson or his attorney.

This would likely ensure that the appeals court would "treat the issue without much attention," the note says. Such disclosure "at worst" would result in only a "limited remand" to the trial court, not a full reversal of Wilson's conviction.

It is not clear who decided to limit disclosure to the appellate brief. Wilson's lawyer alleges it was Trott.

The eventual disclosure was brief and perfunctory: two instances beyond the Briggs declaration in which "the CIA enlisted Wilson's assistance in business transactions." There was nothing about the list of 80 contacts. The appeals court upheld Wilson's conviction without comment.

The letter drafted to Wilson's attorney was never sent.

View From Jail: 'A Few Greedy Prosecutors'

Barred doors open slowly, and Edwin Wilson is escorted into the beige interview room at Allenwood Federal Penitentiary, a maximum-security prison in rural Pennsylvania that also houses convicted spies Aldrich Ames and John A. Walker Jr.

Wilson is dressed in khaki trousers and a gray sweat shirt, clutching a thick sheaf of documents. Unrepentant, he has become a dogged jailhouse lawyer, arguing that he never would have been convicted if the government had played fair.

"It wasn't the CIA, it was the Justice Department," Wilson said during a long and rambling interview. "I'm not mad at the agency, I love the agency. I'm mad at a few greedy prosecutors."

Wilson works now in the prison recreation center, operating a blood pressure machine. Robust and amiable, he lifts weights for two or three hours a day and still spends hours reading law books and marking government documents with a yellow highlighter.

One of them is the Briggs affidavit. A bald-faced lie, he calls it. "A prosecutor has an obligation to tell the truth, not to cover up, not to commit perjury," he said.

Someday he'd like to go back to Washington, rent a "one-light-bulb room" somewhere cheap, gather all his documents on a table, and write his own book. But all that depends on the court in Texas.

"If I don't win in Houston," Edwin Wilson said, "I'll never get out."

The Paper Trail

Government documents obtained by lawyers for former CIA agent Edwin P. Wilson show the evolution of the government's position, presented in a Houston federal courtroom in 1983, that Wilson was not asked to do work for the agency after his retirement in 1971.

Feb. 3, 1983: Affidavit by CIA official Charles A. Briggs denying Wilson did work for the agency.

Feb. 8, 1983: Memo from CIA employee Mark Tanes showing that Wilson did do work for the agency.

Feb. 10, 1983: Memo from Justice Department attorney on issues raised by the Tanes memo.

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Feb. 17, 1983: CIA general counsel Stanley Sporkin seeking a quick resolution.

Feb. 18, 1983: Letter drafted by Justice Department informing Wilson's lawyer of problems with the Briggs affidavit. The letter was never sent.

Feb. 22, 1983: Note from Deputy Assistant Attorney General Mark Richard recommending disclosure.

Aug. 8, 1983: Notes of a CIA-Justice meeting in which the benefits of a limited disclosure are discussed.

January 2000: Government's response to Wilson's motion for a new trial.

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